

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN F. AUSLER,

Petitioner,

v.

M MILLER-STOUT,

Respondent.

No. CV-07-319-FVS

ORDER GRANTING MOTION
TO DISMISS

THIS MATTER comes before the Court based upon the respondent's motion to dismiss.

BACKGROUND

John F. Ausler is in the custody of the Washington Department of Corrections pursuant to his plea of guilty to the crime of Rape of a Child in the Second Degree, RCW 9A.44.076(1). On March 20, 2003, a state superior court judge calculated the "good time" to which Mr. Ausler is entitled. On October 9, 2007, Mr. Ausler lodged a petition for a writ of habeas corpus with the District Court Executive in which he challenges the Judge's calculations. 28 U.S.C. § 2254. On April 18, 2008, the Court entered an order directing service. Mr. Ausler's custodian filed an answer on June 9th, arguing that the petition is time-barred under § 2244(d)(1).

RULING

Mr. Ausler's custodian is correct. He had one year in which to

1 challenge the state judge's order of March 20, 2003. Mr. Ausler did not
2 do so. Consequently, his petition must be dismissed.

3 **IT IS HEREBY ORDERED:**

4 The respondent's motion to dismiss **(Ct. Rec. 22) is granted.**

5 **IT IS SO ORDERED.** The District Court Executive is hereby directed
6 to enter this order and furnish copies to petitioner and counsel for
7 respondent and close this file.

8 **DATED** this 29th day of August, 2008.

9
10 s/ Fred Van Sickle
Fred Van Sickle
11 Senior United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26